

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

## UNITED STATES PATENT AND TRADEMARK OFFICE

### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ROYAN HERBERT BARTLEY, MICHAEL JOHN BRANSON,  
STEVEN GENE HALVERSON, DAVID ALAN JAEGER,  
TODD MARK KELSEY and PAUL WILLIAM WERTZLER



Appeal No. 2006-2412  
Application No. 09/892,424

ON BRIEF

Before HAIRSTON, KRASS and HOMERE, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

#### DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 22.

The disclosed invention relates to a data access mechanism for enabling access to performance data collected at a first computer. If the data access mechanism is enabled, then the performance data is sent to a second computer, and the performance data is accessible by the user of the first computer.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A computer system comprising:
  - at least one processor;
  - a memory coupled to the at least one processor;
  - a performance data collection mechanism residing in the memory and executed by the at least one processor, the performance data collection mechanism collecting performance data for the computer system;
  - a performance data transmission mechanism residing in the memory and executed by the at least one processor, the performance data transmission mechanism, when enabled, transmitting at least a portion of the performance data to another computer system coupled to the computer system via a network; and
  - a performance data access mechanism residing in the memory and executed by the at least one processor, the performance data access mechanism allowing access to the performance data by a user of the computer system only if the performance data transmission mechanism is enabled.

The reference relied on by the examiner is:

Duimovich et al. (Duimovich)      2002/0052947      May 2, 2002  
(filed Apr. 3, 2001)

Claims 1 through 22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Duimovich.

Reference is made to the briefs and the answer for the respective positions of the appellants and the examiner.

#### OPINION

We have carefully considered the entire record before us, and we will reverse the anticipation rejection of claims 1 through 22.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited

functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

All of the claims on appeal require an affirmative action by the user of the computer where the performance data is collected before the user can gain access to the performance data. For example, execution of the performance data access mechanism (claims 1 through 7 and 15 through 22) or enabling a performance data transmission mechanism or step (claims 8 through 14) has to be performed before the user can gain access to the performance data. In Duimovich, the performance data collected by a User Site 50 is accessible by the user, and is transferred to a Director Server Site 120 without any affirmative action on the part of the user at the User Site (paragraph 0033).

In summary, the anticipation rejection of claims 1 through 22 is reversed because the performance data in Duimovich is transferred without any requirement that the user take an affirmative action to gain access to such data.

DECISION

The decision of the examiner rejecting claims 1 through 22 under 35 U.S.C. § 102(e) is reversed.

~~Kenneth W. Hairston~~ REVERSED )  
Kenneth W. Hairston )  
Administrative Patent Judge )  
Errol A. Krass ) BOARD OF PATENT  
Errol A. Krass )  
Administrative Patent Judge ) APPEALS AND  
Jean R. Homere )  
Jean R. Homere ) INTERFERENCES  
Jean R. Homere )  
Administrative Patent Judge )

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